

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8249 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE K.G.BALAKRISHNAN and

MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

UNION OF INDIA

Versus

NF CHAUHAN

Appearance:

MR RJ OZA for Petitioners

SERVED for Respondent No. 1

CORAM : MR.JUSTICE K.G.BALAKRISHNAN and
MR.JUSTICE J.M.PANCHAL

Date of decision: 05/02/98

ORAL JUDGEMENT (Per K.G.Balakrishnan,J.)

The petition was filed challenging the judgment and award passed by the Central Administrative Tribunal, Ahmedabad Bench, in Original Application No.168 of 1995. The respondent herein is working as a Selection Grade Driver in the office of the 2nd petitioner. The respondent filed the Original Application before the Tribunal seeking promotion to Staff Car Driver-Gr.I in the scale of 1300-2040. The Princial Bench of the C.A.T. New Delhi passed an order regarding promotion of Staff Car Drivers in an Original Application filed by the Staff Car Drivers' Association. The Ministry of Law, the Ministry of Finance and the Ministry of Railway and other Departments were directed to comply with the directions issued by the C.A.T., New Delhi. Pursuant to that, an Office Memorandum was issued by the Government of India Ministry of Personnel, Public Grievances and Pension on 30-11-1993. The Office Memorandum is produced at Annexure B. The Staff Car Drivers were divided into 3 categories namely: Staff Car Driver-Ordinary Grade, Staff Car Driver-Gr.II & Staff Car Driver-Gr.I. For promotion to the cadre of Staff Car Driver-Gr.I, six years of regular service as Staff Car Driver Gr.II was necessary. This order came into effect from 11-8-1993. It was stated in that order that while making initial appointment to the above newly created scales, those who have rendered not less than 15 years of service may be considered for appointment to Grade-I. The respondent claimed that he had completed 15 years of service as back as in 1978 and he was entitled to be promoted as Staff Car Driver-Gr.I. He was denied promotion and hence the Original Application was filed before the Tribunal.

2. The petitioner herein contended before the Tribunal that the claim of the respondent was considered by the Departmental Promotion Committee(hereinafter referred to as "DPC"), and he was found not eligible and therefore, he was not given promotion to Staff Car Driver-Gr.I. It was contended by the petitioner that the respondent was awarded punishment of reduction of 3 increments by order dated 20-5-1989 and the DPC considered the Confidential Reports of all the candidates including the respondent for the preceding 5 years from 1994. It was contended that as the respondent had been awarded with punishment of reduction of 3 increments and taking into account that fact, he was found unfit for promotion. The Tribunal, after having considered the contentions raised by both the sides, held that the DPC should not have taken into account the punishment suffered by the applicant in the year 1989. It was also held that as per the scheme, those who had completed 15 years of service as driver were considered for promotion

and there is no dispute that the petitioner therein had completed 15 years of service in 1978 and therefore, the proper course for the DPC was to look into the service record of the applicants for five years prior to the date of completion of 15 years service as driver. The Tribunal also stated that in the applicant's case, the DPC should have taken into account the service record of the applicant upto 1978.

2. We heard the learned Addl.Standing Counsel Mr.R.J.Oza for the petitioner. It is urged before us that the direction of the Tribunal that the DPC should not have considered the confidential reports for the period after 1978 is illegal as the Scheme itself came into force only on 1-8-1993. It is submitted that, if promotion is to be given on the basis of Annexure-B order, the confidential reports of the preceding 5 years is required to be considered by the DPC and that was done in this case and therefore, the order of the Tribunal is not correct. It may be noted that the respondent was awarded punishment on 20-5-1989. Admittedly, the DPC met on 22-9-1994. So, in any case, the DPC should not have considered the punishment which was awarded to the respondent beyond the period of 5 years preceding the date of the DPC Meeting. The respondent suffered the punishment and that was over on 31-5-1992. It is clear that the DPC denied promotion to the respondent solely for the reason that the respondent was awarded punishment in 1989. That was an irrelevant matter and that should not have weighed with the DPC in denying promotion. The learned Tribunal was fully justified in making that observation. However, looking to the Scheme of promotion, it may not be correct to say that the confidential reports for the period after the completion of 15 years, should not have taken into consideration by the DPC. However, that by itself, does not warrant a situation to interfere with the impugned order of the Tribunal.

3. The learned Counsel for the petitioners could not point out any jurisdictional error in the impugned order. In Mohd. Yunus, vs. Mohd. Mustaqim reported in AIR 1984 SC 38, the Supreme Court observed that "a mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Art.227. The supervisory jurisdiction conferred on the High Courts under Art. 227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority" and not to correct an error apparent on the face of the record, much less an error of law. In exercising the supervisory power under art.

227, the High Court does not act as an Appellate Court or Tribunal. It will not review or re-weigh the evidence upon which the determination of the inferior Court or tribunal purports to be based or to correct errors of law in the decision."

4. In the result, the Special Civil Application will have to be dismissed. It is dismissed. The Tribunal has directed that the DPC should be convened within three months from the date of receipt of Tribunal's order, which was passed on 14-8-1997. The respondent has filed affidavit-in reply wherein it is stated that he is due to retire on superannuation within a period of 4 months. Having regard to this fact, we direct respondent no.2 to pass appropriate order regarding the promotion of the appellant within two weeks from the date of receipt of copy of this order. Rule is discharged. Ad-interim stay is vacated. No order as to costs.

5. At this stage, the learned Counsel for the petitioners requests that the operation and implementation of this order be stayed for a period of one month. Having regard to the facts and circumstances of the case, we are not inclined to accede to this request and the request is rejected. A copy of this order be supplied to the learned Counsel for the petitioners for being forwarded to the petitioners.
